

March 2021

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Recommended Citation

Doris M. Besikof, International Adoption - United States Adoption of Vietnamese Children: Vital Considerations for the Courts, 52 Denv. L.J. 771 (1975).

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NOTE

INTERNATIONAL ADOPTION — UNITED STATES ADOPTION OF VIETNAMESE CHILDREN: VITAL CONSIDERATIONS FOR THE COURTS*

The law, therefore, through adoption makes it possible to provide these children with homes in which they will receive affection, care, and protection, from adoptive parents who will have a legal relationship that includes the same rights and responsibilities that exist between natural parents and their children.¹

INTRODUCTION

State statutes which establish and protect the privilege of adoption permit adoption of foreign-born children by United States citizens. As a result, thousands of children orphaned or abandoned in South Viet Nam have been placed for adoption with United States families.

Because of delays involved, because of the special nature of the adoption of a Vietnamese child, and because the child has

*At the printing of this note, May 1975, the state of the law under the recently changed leadership of South Viet Nam is uncertain. However, the laws referred to herein, whether they remain in effect or not, are the legal framework which governed international adoption of Vietnamese orphans in the Republic of Viet Nam under the leadership of President Nguyen van Thieu. For this reason, relevant portions of Vietnamese documents are cited and are included as an appendix to this note.

Although United States adoption of Vietnamese-born children is the frame of reference of this note, similar considerations are relevant with respect to any international adoption.

In Saigon, South Viet Nam, June 22 to July 3, 1974, this author inquired as extensively as possible about the legal and social status of orphaned and abandoned children. Among the many who were most helpful in spite of more pressing concerns with medical, nutritional, and daily care for the children, were: Margaret Moses and Rosemary Taylor, Saigon Director of Friends For All Children; Mr. Robert Chamness, Director of Holt Adoption Services, Saigon; Mrs. Nguyen thi Phuong, Social Worker, International Social Service, Saigon; Ms. Pat Weser, United States Embassy, Saigon; local orphanage directrices and workers in the Delta region and the environs of Saigon.

In the United States, Wende Grant, Director, and the staff of Friends For All Children, Boulder, Colorado, helped to make it possible to gather documentation necessary for treatment of this subject. Nguyen thi Xuan Huong, Vietnamese national and University of Denver graduate student; Connie Boll, Director of Friends of Children, Inc., and of the Rosemary Taylor Agency, both of Darien, Connecticut; and many parents of Vietnamese adopted children have shared their experiences and knowledge.

Further insight has been possible because of this author's work in Vietnamese adoption and in support programs for non-adoptable children in Viet Nam. With her spouse, she has been a party to the United States finalization of the adoption of a Vietnamese-born child.

¹ N.Y. DEP'T SOC. SERV., NEW YORK STATE LEGISLATION ON ADOPTION 5 (1972).

been brought to the United States upon petition for a final decree of adoption in a United States court, it may appear that the court's decision whether or not to grant the decree is somewhat after the fact. The child has been brought half-way around the world. He is probably receiving from the family who wishes to adopt him the most adequate diet, complete medical care, and psychological parenting he has ever known. The family, for its part, has been scrutinized by social workers, adoption agencies, United States immigration authorities, and the Vietnamese government. Nevertheless, the court's decision is crucially important to all the parties to the adoption.

The judge is the last and most authoritative determiner of the future of the parties to an adoption, domestic or international. The ruling of the court must be in the best interest of the child, and in violation of the rights of none of the parties. The final decree, if granted, must be unassailable by any later claims.²

In the case of adoption of a Vietnamese child by a United States family, the court's discretion and protection are particularly necessary for securing the child's best interest. The child has no counsel to represent him, and the agency which placed him with the family is most often geographically distant. The court has the authority to examine post-placement reports and to inquire about the family's adjustment.³ Decrees must not be granted on the premise that even an unpromising future is better than abandonment. The number of applicants for Vietnamese infants far exceeds the number of available children.⁴ These children, like all others, have a right to grow and develop under the best possible circumstances.⁵

² The necessity for the decree to be unassailable is articulated in TENN. CODE ANN. § 36-101 (1955):

[T]o protect them from interference, long after they have become properly adjusted to their adoptive homes, by natural parents who may have some legal claim because of a defect in the adoption procedure.

³ *E.g.*, IDAHO CODE § 16-507 (Supp. 1973).

ORDER OF ADOPTION. — The judge must examine all persons appearing before him pursuant to the last section, each separately, and the report of the investigation provided pursuant to the last section and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

⁴ Interview with Wende Grant, Director of Friends For All Children, in Boulder, Colorado, Oct. 25, 1974.

⁵ Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/811 at 1 (1948); Declara-

A ruling which violates the rights of none of the parties, including those of the natural parents, and the granting of an unassailable final decree are interrelated concerns. If all prior rights to the child have been properly and legally terminated, the decree will be secure from later attack. Parties to the United States adoption of a Vietnamese child are entitled to this protection and final security of status just as are the parties to a domestic adoption.

If an adoption is effected pursuant to local statutes which do not contemplate the problems peculiar to foreign adoptions, there is a possibility that some rights will be violated. Among these are the child's right to the legal status (free for adoption) accorded him by the laws of his domicile and recognized by the United States Immigration Act,⁶ and the right of the adoptive parents to protection from later extortion or unscrupulous claims that rights to the child were not properly terminated.⁷

Jeopardy to the rights of some parties or excessive protection of the rights of others is a distinct possibility when the petition is examined solely within the context of local procedural law. The majority of local statutes pertaining to adoption were not drafted in contemplation of transnational or transcultural adoptions. The substantive intent of the law for the benefit and protection of the parties may actually be violated by strict procedural application of the local statutes. If the court hearing a petition for adoption of a Vietnamese child will consider the vastly different cultural and legal circumstances from which the child so recently comes, and also appreciate the possible narrowness of its local statutes, the parties to the adoption will have the same protection and security of status that parties to domestic adoptions enjoy.

It is the purpose of this note to explore United States and Vietnamese adoption procedures, the cultural realities and legal

tion of the Rights of the Child, G.A. Res. 1386, 14 U.N. GAOR Supp. 16, at 19, U.N. Doc. A/OR/14/5/16 (1959).

⁶ 8 U.S.C. § 1101 (G)(1)(F) (1965).

⁷ See note 11 *infra* regarding protections for adoptive parents; CIVIL CODE OF THE REPUBLIC OF VIET-NAM, Decree-Law No. 028-TT/LSU, tit. 7, ch. 1 (1972) (official transl. Phuong Khanh Nguyen, Legal Processing Assistant, Far Eastern Law Division, Law Library, Library of Congress, August, 1974) [hereinafter cited as C. Civ. V.N.], arts. 248 to 251. The relevant portions of C. Civ. V.N. are included in the appendix to this note. See also the text accompanying notes 31 through 39 *infra* concerning social upheaval and possible ramifications for parties to an adoption.

system of Viet Nam, the statutory perspective of the United States courts, and to provide an added perspective for the court in light of these considerations.

I. UNITED STATES AND VIETNAMESE ADOPTION PROCEDURES:
SIMILAR YET DIFFERENT

A. United States Adoption

The termination of all prior rights to the child and a final decree establishing a legal parent-child relationship between the child and the adoptive parents are the principal components of a United States adoption.⁸ If the natural parents wish to give the child up, they may usually do so in a number of ways: by a release of custody to the new parents; by a release of custody of the child to an agency which then has the authority to make adoptive placement and release its custody to the new parents; by abandonment as defined by the law of the jurisdiction; or by judicial termination of parental rights as defined by the law of the jurisdiction.⁹ In theory at least, in the United States, there is always some person or institution in custody of the child, and custody is traceable back to the birth certificate because recording and certification of the births of children are routine.

In the United States, potential adoptive parents who have received custody of the child petition the court for a final decree of adoption.¹⁰ In hearing this petition, the court determines whether or not the placement is in the best interest of the child, establishes whether the child is indeed legally free for adoption, and attempts to protect the rights of all parties concerned.¹¹ The

⁸ *E.g.*, N.J. REV. STAT. §§ 9:3-24, 30 (1953). Termination of prior parental rights to the child and the decree of adoption are interrelated and part of the same proceeding. *In re Adoption of Children by D.*, 61 N.J. 89, 293 A.2d 171 (1972), discusses the difficulties inherent in the interrelation of both steps. NEV. REV. STAT. § 127.110(2)(g) (1973) is an example of separation of the two steps: "[T]he petition for adoption shall state, in substance, the following: That there has been a full compliance with the law in regard to consent to adoption." The consent to adoption is a separate procedure which precedes a petition to adopt.

⁹ *E.g.*, CAL. CIV. CODE § 224, Consent of Parents and Exceptions; § 224m, Relinquishment for Adoption (West Supp. 1974). These sections are an example of the legal definition of steps usually taken in giving up custody or parental rights.

¹⁰ *E.g.*, IOWA CODE § 600.1 (1971).

¹¹ *See, e.g.*, TENN. CODE ANN. § 36-101 (1955):

Purpose of chapter — Construction. — The primary purpose of this chapter is to protect children from unnecessary separation from parents who might give them good homes and loving care, to protect them from adoption by persons unfit to have responsibility of their care and rearing, and to protect

court's determinations are facilitated by the above-mentioned custom of birth registration and by statutory controls over the form and manner of relinquishment and passage of custody from one party to another. Any "gap" in the legal history of a child born in the United States would indicate possible violation of the rights of a natural parent or some other legal guardian.¹² Concern

them from interference, long after they have become properly adjusted to their adoptive homes, by natural parents who may have some legal claim because of a defect in the adoption procedure.

The secondary purpose of this chapter is to protect the natural parents from hurried decisions, made under strain and anxiety, to give up a child, and to protect foster parents from assuming responsibility for a child about whose heredity or mental or physical condition they know nothing, and to prevent later disturbance of their relationship to the child by natural parents whose legal rights have not been fully protected.

When the interests of a child and those of an adult are in conflict, such conflict should be resolved in favor of the child; and to that end this chapter [shall] be liberally construed.

See also N.J. REV. STAT. § 9:3-17 (1960):

Public policy. This act shall be administered so as to give effect to the public policy of this State to provide for the welfare of children requiring placement for adoption and so as to promote policies and procedures which are socially necessary and desirable for the protection of such children, their natural parents and their adopting parents. To that end, it is necessary and desirable

- (a) to protect the child from unnecessary separation from his natural parents, from adoption by persons unfit for such responsibility, and from interference by his natural parents after he has been established in an adoptive home;
- (b) to protect the natural parents from hurried or abrupt decisions to give up the child;
- (c) to protect the adopting parents from assuming responsibility for a child without sufficient knowledge of the child's heredity and capacity for physical and mental development, and, having accepted a child for adoption, from later disturbance of their relationships to the child by the natural parents.

See also COLO. REV. STAT. ANN. § 19-1-102 (1973); N.C. GEN. STAT. § 48-1 (1966).

¹² See, e.g., VT. STAT. ANN. tit. 15, § 435 (1974). These requirements for consent to the adoption of a minor are typical of the thoroughness of United States state statutes:

Consent to adoption of minor:

Except as hereinafter otherwise provided, if the person to be adopted is a minor, consent to the adoption shall be given, and the final adoption decree executed on the part of the minor, by both of his parents or by the surviving or sole parent. Such consent and decree shall be sufficient when given and executed:

(1) By one parent, if the other parent has abandoned the care and support of the minor, or is, in the opinion of the probate court, incompetent to have the care and custody of such minor;

(2) By the mother, if the minor is not born in lawful wedlock, or though such minor was born to a woman living in lawful wedlock, it is proved beyond

about this continuity of legal custody is well in keeping with the adoption hearing's purpose to protect the rights of all the parties.¹³

United States adoptions of Vietnamese children have appeared for finalization in significant numbers before United States courts in the past 5 years.¹⁴ Although the legal formalities observed in the adoption procedure itself are similar, the course of a child's life from birth to adoption and the legal documenta-

a reasonable doubt that the husband of such woman is not, by reason of nonaccess, the father of such minor;

(3) By the minor and his spouse, if the minor is married;

(4) By the guardian, if the minor is under guardianship;

(5) By the department of social and rehabilitation services, if the minor has no parent, guardian, husband or wife, or if the parents, guardian, husband or wife of such minor have abandoned his care and support or have left the state or, in the opinion of the probate court, are incompetent to have the care and custody of the minor;

(6) By the department of social and rehabilitation services of this state or its counterpart in another state, if the minor has been committed to the care and custody of such department by a court of competent jurisdiction without limitation in respect to adoption, or if the minor has been relinquished to it in accordance with applicable state law;

(7) By a child placing agency licensed or approved by the appropriate authority in this or another state if the minor has been committed to the care and custody of such department by a court of competent jurisdiction without limitation as to adoption, or if the minor has been relinquished to it in accordance with applicable state law;

(8) By the parent or parents as above provided, though one or both of such parents be minors, if such minor parents are, in the opinion of the probate court, of sufficient judgment and discretion to act for the best interest of such child to be adopted; otherwise consent shall be given and the decree executed by and in behalf of such minor parents as though such minor parents were being adopted; but in neither case shall the adoption be subject under provisions of section 454 of this title to being vacated at the instance of such minor parents after they become of age;

(9) By the department of social and rehabilitation services, if the minor has been adopted in a foreign country and if readoption is necessary in the United States, for the purpose of naturalization as a citizen of this country;

(10) By the department of social and rehabilitation services when so authorized by a public agency or licensed child placing agency of another state having jurisdiction of a child whose adoptive parents are residing in Vermont.

¹³ *Supra* note 11. See also text following note 5 *supra*.

¹⁴ Between July 1969 and July 1973, 6,400 United States visas were issued to Vietnamese-born children. Of those, 3,790 were granted citizenship at birth and acknowledged by American fathers. An estimated 2,640 entered the United States as immigrants awaiting adoption by United States families. USAID, Meeting on Placement and Adoption of Vietnamese Children in American Homes, 18 (1973).

tion of that period are quite different from what they would have been in the United States.

B. Vietnamese Adoption

In Viet Nam recording and certification of births are not routinely done. The natural mother may or may not register the child at birth.¹⁵ If natural parents are unable to provide for a child, it may simply be raised by the large, extended family unit to which they and the child belong.¹⁶ The intervening circumstances of war, extreme poverty, and vice have perpetuated a climate wherein family units are weakened and often destroyed.¹⁷ Thus, children are commonly given up by abandonment to the care of local orphanages, to unrelated persons, or simply deserted in public places. Formal relinquishment is possible, but seldom practiced.¹⁸

In the United States the adoptive parents initiate proceedings; under Vietnamese law any of the parties to the adoption may request an adoption hearing.¹⁹ In that public hearing the court approves or rejects the adoption on the basis of two criteria: (1) Fulfillment of legal conditions; and (2) legitimate motivation for the adoption and its benefit to the child.²⁰ An adoption contract containing required consents and drawn in the presence of a notary at the residence of either the child or the adoptive parents must be submitted in a brief prior to the hearing.²¹

¹⁵ Customs with respect to birth registration vary. The date may indicate when the child began school, the date of conception, or the date when the child reached 1 year of age. Registration of birth is often done to attain a status such as student, aid recipient, or property holder.

¹⁶ "[A]nd I asked her [the grandmother] what would the mother do with these children? And she said, 'Take care of them as long as we can. These are our children.'" *Hearings on Relief and Rehabilitation of War Victims in Indochina Before the Subcomm. to Investigate Problems Connected with Refugees and Escapees of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess., pt. 2 *Orphans and Child Welfare* at 12 (1973) [hereinafter cited as *Rel. & Rehab. War Victims Hearing*].

¹⁷ See MINISTRY OF SOCIAL WELFARE, REPUBLIC OF VIET-NAM, SOCIAL POLICY AND OPERATIONAL PROGRAMS ACCOMPLISHED BY THE MINISTRY OF SOCIAL WELFARE at 24; pt. IV at 31 (1968-71) [hereinafter cited as V.N. SOC. POL.].

¹⁸ A semi-literate, destitute, or socially embarrassed mother is not likely to see the need to record her failure by identifying herself in a relinquishment.

¹⁹ C. Civ. V.N. art. 254.

²⁰ *Id.*

²¹ *Id.* art. 252.

C. *Differences Between United States and Vietnamese Adoptions*

The child's identity and his legal status as free for adoption must be established in adoption proceedings in both countries. This is accomplished by a birth certificate and a release of custody which are required to accompany the petition for adoption. Thus, the Vietnamese born, United States-adopted child comes before the court with the same documentation that is routine in domestic United States adoptions: a birth certificate or birth judgment, and a release of custody with consent to adoption.

The hidden difference is that these documents have been formulated in compliance with *Vietnamese* rather than United States law.²² The Vietnamese birth certificate and release of custody to the adoptive parents have evolved from radically different cultural circumstances and from a legal system designed to serve people in those circumstances.²³ In Viet Nam the birth certificate may name a natural mother, and the release with consent to adopt may come from an orphanage, with no accounting for any span of time or termination of rights in the interim. Vietnamese law permits legal custody and the authority to release a child for adoption to originate in the institution sheltering a child.²⁴ Establishment of such authority in the institution caring for a child facilitates chances for betterment of the position of the orphaned or abandoned child. His best interest is served by legal allowances for the impossibility of exhaustive identification of someone in his circumstances whereas, in the United States, where the hardships of war, poverty, and vice do not exist to a similar extent, such a legal standard might violate the best interests of a child and only an exhaustive legal verification of his past may serve him best.

²² *Id.* arts. 247-51.

²³ We can understand that the Social Welfare policy of the Republic of Viet-Nam was worked out based on the Constitution of 1st April, 1967, especially on the following provisions
V.N. Soc. Pol. at 5.

²⁴ C. Civ. V.N. arts. 249-52, 254 at appendix. By allowing establishment of authority to consent and powers of relinquishment over a child with no prior legal identity, Vietnamese law facilitates adoption or other benefits in spite of the impossibility of tracing his life history.

The Ministry of Social Welfare has articulated the government's concern: "The state advocates protecting the families, mothers and infants because the family is the foundation of society." V.N. Soc. Pol. at 6. This concern is also evident in constant references to orphaned and abandoned children as "underprivileged elements" in Vietnamese society and needful of support.

II. THE CULTURAL REALITIES AND LEGAL SYSTEM OF VIET NAM

Some exploration of both the cultural realities and the legal system of Viet Nam is necessary to an articulation of considerations which could broaden a court's perspective in the application of local United States statutes.

A. *Cultural Realities*

Complete documentation of a social climate is difficult at best. These observations on Vietnamese culture and customs are carefully made after extended research with directors of Vietnamese orphanages, foreign agencies, adoption workers, embassy officials, missionaries, Vietnamese and French-Vietnamese citizens, and American parents familiar with the histories of their adopted Vietnamese children.

The family remains un supplanted as the strong center of Vietnamese society. The Constitution of Viet Nam affirms its central importance.²⁵ The child is answerable to and watched over by everyone older in his family unit.²⁶ Adoption is not common even though it is encouraged by the government²⁷ in this time of war, upheaval, and extreme poverty. An adopted child under Vietnamese law immediately loses his right to the family altar and inheritance at the birth of a natural heir.²⁸ The importance of the family concept and the anomalous position of an adopted child is exemplified by a Vietnamese woman who explained the security and strength of the extended family unit while stating that she had eight natural children and one legally adopted *niece*, a term which illustrates the lesser status of adopted children in Vietnamese society.

Local orphanages in Viet Nam are shelters for children who have been orphaned or abandoned. The same religious order may often also provide extended care and day care for other needy children. There is recognized, however, a sharp distinction between orphans and children who have not been totally aban-

²⁵ CONSTITUTION, REPUBLIC OF VIET NAM art. 17 (1967) (V.N. Soc. POL. transl. 1971). The State recognizes the family as the foundation of the society. The State encourages and assists in the formation of families, and cares for mothers and infants.

Id.

²⁶ Interviews with Nguyen thi Xuan Huong, University of Denver graduate student, in Denver, Colorado, Sept. 1974 and interviews in Saigon, Viet Nam, June 1974.

²⁷ V.N. Soc. POL. at 29.

²⁸ C. Civ. V.N. arts. 261 & 262.

doned. It was explained to the author that recordation of vital statistics, such as marriage or legal relinquishment of custody of a child, have only recently become routine. People are semi-literate, well known to one another only within their communities, and unlikely to travel more than a few miles from home in a lifetime.²⁹ The head of an orphanage, however, is active in the community and known to all, and does have the means to ascertain the status of the children in the orphanage.

Orphanages are not casual about the release of children. Children are their reason for existence. Dark-skinned, racially mixed, deformed, handicapped, male, or desperately ill children are often those released for adoption. They are the ones with the least hope of integration into their communities; the least likely to find a means of livelihood to enable them to survive. Thus, the child who comes before United States courts for adoption has survived a process of somewhat negative selection within his native society.

Along with the disruption of the family unit and resultant traumas for children, there has been a simultaneous flourishing of the unsavory elements of society:

The social evils are developing extensively and become an increasingly serious and complicated problem. War and poverty are the most favorable medium for the increase of vagrancy, juvenile delinquency, prostitution, use of narcotics and gambling. Preventive and eradication measures have been taken against those vices.³⁰

There are large concentrations of orphaned or abandoned children in areas known for what the Ministry of Social Welfare terms "social evils."³¹

United States adoption statutes recognize and provide

²⁹ Interviews with Mrs. Nguyen thi Phuong, Social Worker, International Social Service, Saigon, June 1974; and Nguyen thi Xuan Huong, University of Denver graduate student, Denver, Colorado, Sept. 1974.

³⁰ V.N. Soc. POL. at 31.

³¹ There are 19 orphanages in Gia Dinh Province which includes the city of Saigon. The geographical region which includes Saigon has 39 percent of the total number of orphanages in the Republic of Viet Nam. 19.5 percent of them are in the region which includes the city of Da Nang. V.N. Soc. POL. at 26.

Outside the door in Saigon, youthful human flotsam . . . scraping a pittance. . . . Some just beg; others steal or become prostitutes — and some, even the youngest, have turned to pushing drugs.

NEWSWEEK, May 28, 1973 at 53; also included in an extension of remarks inserted by Representative Mink, CONG. REC. 3428 (daily ed. May 24, 1973).

against black market practices in adoption.³² These practices exist in Viet Nam as well and are not statutorily treated. In addition to having comparable motivations for profit, the potential Vietnamese opportunist is also a person in most dire straits, in whose environment it is accepted that the unscrupulous or desperate commonly, if illegally, sell children or derive income from their labors.³³

Specific information commonly available in the United States which permits conclusive determination of identity and responsible advertisement of notice is not easily obtainable in Viet Nam. In the Vietnamese language certain names are more common than Smith or Jones are in English.³⁴ Vietnamese birth certificates do not commonly include details about parents' racial background, appearance, education, or occupation which would permit distinction between persons of the same name.³⁵ Established mailing addresses and identification comparable to social security numbers may be unavailable due to the present conditions in the country.

In light of these cultural factors³⁶ it is foreseeable that a mismanaged attempt to verify the authority to give consent, or

³² *E.g.*, TEX. REV. CIV. STAT. ANN. art. 695e (1974) Bringing Child into State for Placing; MO. REV. STAT. § 543.110 (Supp. 1967) Prohibiting Transfer of Custody of the Child: Penalty; MICH. COMP. LAWS § 722.108 (1973) Restrictions on Child Placing in Michigan.

³³ *Rel. & Rehab. War Victims Hearing*, *supra* note 15, at 17.

SEN. KENNEDY. "[C]ould you talk just a moment about one of the problems that you have been aware of, as to how real it is, the fact that mothers actually sell children in Viet Nam."

MR. KLEIN. "This is true, Mr. Chairman."

SEN. KENNEDY. "And also the problem of abandoning children. Is this true?"

MR. KLEIN. "This is true, Mr. Chairman."

Statement of Mr. Wells Klein, Executive Director, American Council for Nationalities Service, New York, and Member of the Kennedy Study Mission to South Viet Nam. Regarding parents' deriving income from their children's labor *see* appendix to this note, C. Civ. V.N. art. 274 (control of children's property); art. 276 (control of property earned by child's labor).

³⁴ Family names such as "Nguyen" or "Ton" originally indicated geographical origins of a family. Today people socially embarrassed by their origins often give children different names to avoid stigma. Interview with Nguyen thi Xuan Huong, University of Denver graduate student, in Denver, Colorado, Sept. 1974.

³⁵ Interview with Suzanne Dosh, Assistant Director, Friends For All Children; Peg Peters and Sandra Schneider, Adoption Workers, Friends For All Children, in Boulder, Colorado, Sept. 1974.

³⁶ *See* notes 31, 32, 34, & 35 *supra*, and accompanying text.

the indiscriminate publication of notice required by a United States court, could provide an opportunity for an unscrupulous person to claim the child, thereby creating a legal limbo into which the child is propelled by requirements designed to provide certainty of status.

B. *Legal System*

Vietnamese law would attempt to preclude the opportunity for exploitation of the child or the adoptive family by recognizing and requiring consent of the family council in the absence of parents or grandparents with legal control, and by giving the head of the benevolent institution³⁷ rearing a child the power to relinquish custody and consent to its adoption. Courts assume custody and give consent for children abandoned in the streets and for recognized illegitimate children without known or identified parents.³⁸ Constructive notice or notice by advertisement is not required.

The rights of the natural relatives, including parents, grandparents, and family council, are of a much broader scope than in the United States where the grandparents' consent is only required in those states which refuse to accept relinquishment by a minor natural mother without her parents' consent also.³⁹

Protection of the rights of the natural parents is accomplished by provision for authority through a stipulated sequence of relatives if the parents or others in the sequence are dead or "unable to express an opinion on the matter."⁴⁰

³⁷ See appendix to this note, C. Civ. V.N. arts. 249-52, 254. Charitable institutions are defined by Vietnamese law. Decree Law No. 027/66 art. 1 (1966) (legal transl. Truong Dac Phuong):

All organizations operating in the territory of Viet Nam and set up either by an individual or a religious denomination, with a fraternal, non-profit seeking object, and having the capacity to receive at least 10 persons, for feeding them and assisting them, shall be considered as charitable organization[s] governed by the provisions hereof.

They are further defined, Order No. 620/BXH/ND art. 1 (1966) (legal transl. Truong Dac Phuong):

Shall be considered as charitable institutions by article 1 of Decree Law No. 027/66 . . . the following organizations: orphanages, small children nursery, old people houses, beggar improvement houses, mute and deaf houses, children sponsorship center, vocational training centers, etc. and similar organizations, meeting all the conditions provided in article 1 hereabove and the activities of which are permanent.

³⁸ C. Civ. V.N. art. 250 in the appendix to this note.

³⁹ *E.g.*, MINN. STAT. ANN. § 259.24(2) (1972).

⁴⁰ See C. Civ. V.N. arts., 249, 250 in the appendix to this note.

Notice is automatic with the search through the progression of parties empowered to consent by the death or incapacity of others closer to the child. Allowance for separations due to the upheavals and disasters of war is apparent in the phrase "dead or unable to express an opinion," which occurs several times in the text of the law.⁴¹

Both Vietnamese laws and government statements of intent express strong motivation to provide for the orphaned and abandoned.⁴² Due to the death, disappearance, and incapacity of so many, the paramount concern is to meet the needs of the homeless, and thereby mend the fabric of Vietnamese society.⁴³ Legal standards of Viet Nam are like the laws of the United States in that they reflect the cultural concerns, protect the rights, and attempt to meet the needs of the people they govern. Legislatures and courts must, however, realize that while the concerns of the two countries regarding children are the same, the means of implementation of the safeguards of all rights are different and the differences must be recognized in order that the best interest of the parties be served.

III. STATE STATUTES—THE PRESENT PERSPECTIVE OF THE COURT

At this time, there is no uniform United States policy with respect to recognition of the legal documents of the foreign-born, United States-adopted child. A United Nations agreement on the subject, ratified by both parties, or a United States-Vietnamese treaty supported by an act of Congress, would provide a standard for such uniform treatment.⁴⁴ Neither the United Nations Declaration on Human Rights nor the United Nations Declaration on the Rights of the Child make specific mention of the legal status of the orphaned or abandoned child.⁴⁵ To date no treaty between

⁴¹ *Id.* This is further evidenced by provision for passage of paternal power from father to mother in C. Civ. V.N. art. 267: "In case the father . . . cannot exercise such power due to his absence or any other reason whatsoever"

⁴² See CONSTITUTION, REPUBLIC OF VIET NAM, art. 17, *supra* note 25. Further statements of this intent are: V.N. Soc. POL., *supra* note 17 at 6 (recognition of families, mothers and infants as underprivileged elements of society); *id.* at 17 (government resettlement of 197,378 refugees, 53 percent of whom were under 15 years of age); *id.* at 25 (Coming Home Program to reunite children with families where possible and encouragement of adoption).

⁴³ V.N. Soc. POL., *supra* notes 23-25 & 42.

⁴⁴ M. FORKOSCH, CONSTITUTIONAL LAW 156 (2d ed. 1969): "Under Art. VI a ratified treaty becomes the law of the land, even though it is not a legislative act but more nearly a 'contract' between two nations."

⁴⁵ *Supra* note 5.

the United States and Viet Nam with respect to adoption has been concluded; and there appears to be no treaty between any other country and the United States which would serve as precedent for uniform determination of the legal status of children based either on laws of their domicile, or on some other standard. During the period of numerous inter-country Korean adoptions of the 1950's and 1960's, there was apparently nothing concluded.⁴⁶

Each state enacts laws to protect the rights and provide for the needs of citizens within its own jurisdiction. Most states make little or no provision in their adoption statutes for the completely different culture, legal system, customs, and economic environment from which the foreign-born, United States-adopted child comes.⁴⁷ Although some states may recognize foreign judicial decrees of termination of parental rights, this is helpful only in the instance that there is such a decree from the domicile.⁴⁸ In Vietnamese placements this is not a usual occurrence. The Uniform Adoption Act, which is incorporated in the statutes of many states, mentions foreign adoption, but does not uniformly provide for recognition of the law of the child's domicile with respect to relinquishment for adoption.⁴⁹ There is thus grave possibility of violence to the rights of the very parties whom the statutes by their intent would protect.⁵⁰

A. *With Respect to Consent*⁵¹

1. Consent by Guardian

One purpose of statutory regulation of authority to consent

⁴⁶ Interview with John Adams, Director of Holt Children's Services in Eugene, Oregon, Sept. 6, 1974.

⁴⁷ *E.g.*, DEL. CODE ANN. tit. 13 § 927 (Cum. Supp. 1970); MICH. COMP. LAWS ANN. § 710.3(3)(a)(3) (1973); MONT. REV. CODES ANN. § 61-215 (1957); N.J. STAT. ANN. § 9:3-17 (Supp. 1960); N.M. STAT. ANN. § 22-2-35 (1973); ORE. REV. STAT. § 109.385 (1973); PA. STAT. ANN. tit. 5, § 509 (Supp. 1974); S.C. CODE ANN. § 71-207 (1962).

⁴⁸ *See, e.g.*, N.D. CENT. CODE § 14-15-17 (1971).

⁴⁹ *See, e.g.*, OKLA. STAT. ANN. tit. 10, § 60.20 (1966); MONT. REV. CODE ANN. § 61-2-15 (Supp. 1971). Both statutes, typically, give the same effect to a foreign decree of adoption as to a decree issued within state jurisdiction. This is of little help to the foreign-born child not yet finally adopted in his own country when he is petitioning for a United States adoption.

⁵⁰ *See, e.g.*, jurisdictional statutory requirements, WIS. STAT. ANN. §§ 48.84 (persons required to consent).

⁵¹ It must be clear that this discussion of statutory characteristics is illustrative of a variety of legal procedures. Any evaluation is made with respect to international adoption only. Exhaustive comparison of state law would serve no purpose, since jeopardy to the rights of the parties as discussed herein occurs in jurisdictions where courts have discretion

is protection of all parties to the adoption from coercion or other unscrupulous practices by an intermediary who also may be custodian of the child.⁵² State statutes commonly provide for custody in a court or designee of the court when there is no living person in custody of the child.⁵³ However, establishment of custody and concomitant authority to give consent for adoption of a child without a guardian varies widely.⁵⁴

In Hawaii, for instance, consent may be given by the court itself if the guardian is not legally empowered to give consent.⁵⁵ In Georgia, consent may be waived where parents are incapacitated or cannot be found and "the court is of the opinion that the adoption is for the best interest of the child. . . ."⁵⁶ Among the strictest provisions are those requiring judicial termination of parental rights or an order from a court giving consent powers to a guardian.⁵⁷ More moderate is the requirement that the person giving consent have authority to do so under the laws of the jurisdiction of the child's domicile.⁵⁸ Oklahoma, for example, recognizes consent of the person having legal custody who resides outside the United States.⁵⁹ A state not specifically recognizing a foreign legal document may very probably recognize the validity of a relinquishment of custody, a consent to adopt, or an adoption decree from elsewhere in the United States so long as it is in compliance with the laws of the state having jurisdiction.⁶⁰ Many states appoint an individual or an agency to act as next friend or

in enforcing statutory requirements to promote the best interest of the child. Where that discretion is not specifically granted, legislative intent to act in the child's best interest would still allow something less than strict statutory construction. See note 11 *supra*.

⁵² *E.g.*, MD. ANN. CODE art. 16, § 67(a) (1973); NEB. REV. STAT. §§ 43-708 (1974).

⁵³ See note 61 *infra*.

⁵⁴ *E.g.*, KY. REV. STAT. ANN. § 199.500 (1972); NEV. REV. STAT. §§ 127.040, 127.050, 127.053, 127.055, 127.057 (1973); S.D. COMPILED LAWS ANN. § 25-6-4 (1967); VT. STAT. ANN. tit. 15, § 432(a) (1974); VA. CODE ANN. § 63.1-225 (interim Supp. 1974).

⁵⁵ HAWAII REV. STAT. § 578-2(4) (Supp. 1974).

⁵⁶ GA. CODE ANN. § 74-403 (2) (1974) (exemption where child abandoned or parental custody terminated).

⁵⁷ *E.g.*, MD. ANN. CODE art. 16, § 72(a) (1973) (concerning court order establishing consent powers); WIS. STAT. ANN. §§ 48.84(1)(a), 48.871 (1957) (concerning judicial termination of parental rights).

⁵⁸ *E.g.*, MICH. COMP. LAWS ANN. § 710.44(4) (Supp. 1975):

[T]he court . . . shall determine whether the consent was executed in accordance with the laws of that state or country

⁵⁹ OKLA. STAT. ANN. tit. 10, § 60.5(6) (Supp. 1974).

⁶⁰ *E.g.*, ME. REV. STAT. ANN. tit. 19, § 535 (1964); MO. ANN. STAT. § 453.170 (Vernon 1949).

representative of the child when no one fulfills the statutory requirements authorizing power of consent.⁶¹ The appointment of a next friend indicates recognition of the fact that the child's best interests will truly be served when he is a separate party to the adoption with his own legal counsel.⁶²

2. Consent by Intermediary Agency

In any international adoption the court and counsel must appreciate that whether or not the international agency which acts as intermediary holds legal custody and gives consent for the adoption, examination of its role is one of the most thorough protections for the rights of all the parties. Understanding of the foreign legal and cultural parameters within which the intermediary functions will facilitate reasonable application of state statutory requirements for both consent to adopt and notice.

The local Vietnamese orphanage which consents to adoption by a United States family might appear to be the counterpart of an American placement agency. Rather, it is the international agency which acts as intermediary and brings the available child and prospective parents together. The Vietnamese orphanage stands in the place of the natural parent for an orphaned or abandoned child. An agency which is licensed in Viet Nam may or may not have authority to consent,⁶³ but does parallel the placement agency in a domestic United States adoption.

Strict Vietnamese control of intermediary practices is achieved by means of individual contracts by which foreign agencies are licensed to operate in Viet Nam, rather than by statutes controlling operation of charitable institutions.⁶⁴ Each contract is by government decree.⁶⁵ Due to varied forms of guardianship per-

⁶¹ E.g., W. VA. CODE ANN. § 48-4-1 (Supp. 1974):

[I]f there be no legal guardian nor any person having the legal custody of the child, then such consent must be obtained from some discreet and suitable person appointed by the court or judge thereof to act as the next friend of such child

⁶² *Scarpetta v. Spence-Chapin Adoption Serv.*, 28 N.Y.2d 185, 269 N.E.2d 787, 321 N.Y.S.2d 65, *cert. denied*, 404 U.S. 805 (1971); J. GOLDSTEIN, A. FREUD & A.J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 65 (1973); Foster, *Adoption and Child Custody: Best Interests of the Child?*, 22 BUFF. L. REV. 1 (1972).

⁶³ This authority is by individual contract, note 65 *infra*.

⁶⁴ As charitable institutions, Vietnamese orphanages and international agencies are strictly controlled and subject to inspection at all times. They are accountable for their finances and charges. See note 37 *supra* for definition of a charitable institution.

⁶⁵ The usual contract begins with an order number identifying the institution which

mitted by these individual contracts, foreign agencies may place children with releases directly from the local orphanage to a family in the United States.⁶⁶ Awareness of this governmental control of all foreign adoptions and of the scope of authority of a governmentally-limited number of agencies is significant to the judicial consideration of the role of the intermediary in Vietnamese placements. Verification of authority to give consent may or may not give an indication of the intermediary's activities, but the terms of its Vietnamese contract will.⁶⁷

Examination of the authority of the benevolent society, *i.e.* charitable institution, to relinquish the child without consideration of the credentials and the role of the international agency which actually made the placement will not provide the protection for the parties which United States laws intend.⁶⁸

B. *With Respect to Notice*

In the United States, statutory provision for notice to the natural parents of an adoption hearing is a component of the

has been decreed a charitable institution by the Ministry of Social Welfare. Usual terms of such a contract would include agreements to absolutely respect Vietnamese adoption laws; agreement to place children only with families having approved social work home studies with certified approvals; agreement to provide nourishment for children, to assist local orphanages, and to provide emergency medical care; and agreement to hold guardianship of children only as specified by contract.

⁶⁶ The scope of authority permitted by contract is discussed in note 65 *supra*. An international agency may not have spent the months required by the added paperwork step of documenting its legal custody on a per child basis when that custody is already decreed by contract.

⁶⁷ Note 65 *supra*.

⁶⁸ The term "benevolent society" (C. Civ. V. N. arts. 250, 253 in appendix to this note) comes from the Vietnamese "hoi phuoc thien." Vietnamese law is modeled after the French Civil Code and French is the second language in Viet Nam. Translated from this French-Vietnamese background, the English choice of words would be "benevolent society." This is so because the French adjective "benevole" means without charge, while the French adjective "charitable" only refers to the Biblical virtue of love for one's neighbor. The operation of the groups defined in note 37 *supra* is more accurately "benevole." "Societe," in French, refers to an organized group of people working together while the French noun "institution" denotes the commencement of something, or a social institution such as marriage. Without French influence the Vietnamese to English translation of "hoi phuoc thien" is more accurately "charitable institution." Decree Law No. 027/66 Order No. 620 BXH/ND, which refer to charitable institutions, and C. Civ. V.N. arts. 250, 253, which refer to benevolent societies, were translated by two different persons. From their context it is apparent that both refer to the groups sheltering and having custody of orphaned, abandoned children. PETITE LAROUSSE DICTIONNAIRE ENCYCLOPEDIQUE 115, 191, 555, 974 (1959); interview with Nguyen thi Xuan Huong, University of Denver graduate student, in Denver, Colorado, Sept. 1974; notes 19 and 37 *supra*; C. Civ. V.N., appendix to this note.

constitutional right of due process.⁶⁹ Notice may or may not be required to parents whose consent is not required because their parental rights are terminated.⁷⁰ Louisiana appoints a curator ad hoc, who may accept service of notice where the parent "cannot be located or is not domiciled within the state."⁷¹ Even when both parents are dead, Rhode Island requires that notice be published in such newspaper as the court directs.⁷²

Concerns for the non-custodial divorced parent,⁷³ the natural mother,⁷⁴ and the security of the child and his adoptive family after issuance of the final decree⁷⁵ are all well founded in view of the rising divorce rate, and the vulnerability of the parties to extortionate or black market adoption practices.

The only provision for notice in Vietnamese adoption law is that in the event of divorce, the parent in custody "should notify the other spouse" of the adoption.⁷⁶ Passage of the power of consent from parents through paternal grandparents, maternal grandparents, and family council to court or benevolent society, protects ties to biological relatives and provides for notice in a manner more cognizant of local realities in Viet Nam than would a United States court-ordered summons.⁷⁷

Because only persons within the jurisdiction of the United States are entitled to constitutional due process,⁷⁸ a court may be

⁶⁹ U.S. CONST. amend. V, XIV.

⁷⁰ Compare N.C. GEN. STAT. § 48-5 (Supp. 1974) which does not require presence or consent of an abandoning parent or guardian with ARK. STAT. ANN. § 56-104 (1971) which requires notice to "all whom it may concern."

⁷¹ LA. REV. STAT. ANN. § 9:426 (1965).

⁷² R.I. GEN. LAWS ANN. § 15-7-8 (1969).

⁷³ E.g., *In re Adoption of Bascom*, 126 Mont. 614, 246 P.2d 223 (1952).

⁷⁴ Statutes specifying a period of time which must elapse before relinquishment is valid are common. E.g., ARIZ. REV. STAT. ANN. § 8-107 (Supp. 1973); ILL. REV. STAT. ch. 4, § 9.1-8 (Supp. 1974). U.S. CONST., note 69 *supra*, also establishes the right of the natural parent to notice as a party to the adoption of a child.

⁷⁵ Letter from Daniel J. Evans, Governor of the State of Washington, to the Washington State Senate, March 20, 1973, accompanying Senate Bill No. 2459, ch. 134 (1973):

Failure to give such notice can mean that adoptive parents may lose their child at some point in the future if the parent who was not notified attacks the adoption in court. The processes and procedures provided for in this act are designed to render as secure as possible any adoption which is finalized in a legal manner.

⁷⁶ C. CIV. V.N. art. 249 in appendix to this note.

⁷⁷ Interview with Nguyen thi Xuan Huong, University of Denver graduate student, in Denver, Colorado, Sept. 1974. See text accompanying note 29 *supra*.

⁷⁸ *Wong Wing v. United States*, 163 U.S. 228, 242 (1896) (concurring opinion):

acting improperly by extending such protection to those still in Viet Nam. Strict construction and application of local statutory requirements for authority to consent or service of notice would be in part an incorrect presumption that the same constitutional rights and the same social circumstances exist in the forum from which the child immigrates.⁷⁹

IV. ADDED PERSPECTIVE FOR THE COURT

A court aware of differences between United States and Vietnamese adoption procedures, the influence of Vietnamese law and culture on the parties to the adoption, and the possible narrowness or inapplicability of local statutes will be best able to rule in the best interest of the child, to protect the rights of the parties, and to assure the finality and security of its final decree. The following suggestions may aid the court in meeting its responsibilities.

A. Comity

Use of the principle of comity would permit recognition of an individual's status under foreign law, so long as it is not offensive to the morals or public policy of the local forum.⁸⁰ In a parallel circumstance, polygamous foreign marriage has been recognized by comity so that the parties to that institution are not deprived of the incidents and benefits of their status.⁸¹ In discussion of comity, Goodrich notes "[R]easonable expectations of the family members arising out of their relationship based on their personal law could be given the maximum effect possible under

The term "person," used in the fifth amendment, is broad enough to include any and every human being *within the jurisdiction of the republic*. *Id.* (emphasis added).

⁷⁹ There is no express mention of due process of law in the Vietnamese Constitution.

⁸⁰ To constitute a conflict with the public policy of the state justifying rejection of the foreign law or right, the latter must be contra to good morals or natural justice or prejudicial to the state or its citizens.

15A C.J.S. Conflict of Laws § 4(4)b (1967).

Doubtless Congress, by virtue of its powers in the field of foreign relations, might also lay down a mandatory rule regarding recognition of foreign judgments in every court of the United States. At present the duty to recognize judgments even in national courts rests only on comity and is qualified, in the judgment of the Supreme Court, by a strict rule of parity.

CONSTITUTION OF THE UNITED STATES OF AMERICA, ANNOTATIONS OF CASES DECIDED BY THE SUPREME COURT OF THE UNITED STATES TO JUNE, 1964 (N. Small ed. 1964, U.S. Govt. Printing Off.) at 775.

⁸¹ *In re Dalip Singh Bir's Estate*, 83 Cal. App. 2d 256, 188 P.2d 499 (1948). Two widowed spouses were granted a share in the estate of the deceased.

forum law."⁸² Acceptance of the legal status of the child relinquished for adoption established under Vietnamese law would allow him the benefit of an adoptive family.⁸³ Denial of that benefit, or unnecessary peril to it, is hardly in keeping with the morals, public policy, or intent of the United States adoption laws to serve the best interest of the child.⁸⁴ In *Doulgeris v. Bambacus*,⁸⁵ Virginia courts refused to recognize a Greek adoption finalized in Greece without consent of the natural mother. Homer Clark found this denial to the adopted child a failure to afford her the protection of her best interests which was at the heart of Virginia legal policy.⁸⁶ He also noted other United States acceptances of Greek adoptions.⁸⁷

Legislative intent to protect the best interest of the child and acceptance of Vietnamese legal standards through comity would permit reasonable, though not always statutorily strict, verification of the child's legal status.

B. *Legislative Reform*

Growing interest in foreign placements is and has been a trend since Korean adoptions began in significant numbers.⁸⁸ Increased numbers of Vietnamese adoptions appearing for finalization before United States courts attest to this.⁸⁹ There are no indications that the situation will change. Birth control and legalized abortion may continue the scarcity of adoptable children and a corresponding surplus of potential adoptive parents in the United States for some time. Legislation which makes provision for this trend is needed. Enactment of state statutes dealing spe-

⁸² H. GOODRICH & E. SCOLES, *CONFLICT LAWS* 243 (1964).

⁸³ C. CIV. V.N. arts. 248, 253 at appendix to this note.

⁸⁴ See notes 11 and 80 *supra*.

⁸⁵ 203 Va. 670, 127 S.E.2d 145 (1962). In this case, strict construction of state statute denied the best interest of the child, which interest Virginia law by its intent would protect.

⁸⁶ H. CLARK, JR., *LAW OF DOMESTIC RELATIONS* 665 (1968). In *Doulgeris v. Bambacus*, 203 Va. 670, 127 S.E.2d 145 (1962), the child's adoption for convenience of an aging couple was an accomplished fact. Denial of recognition of her status, because her legal Greek adoption was without her natural mother's consent, was of no benefit to the child or to the natural mother. It also deprived her of an inheritance which would have been in her best interest after years of service and companionship to the adoptive parents.

⁸⁷ H. CLARK, *supra* note 86.

⁸⁸ The late Mr. Harry Holt began the Holt Adoption Program in 1956. Since that time, Holt has found homes for over 12,000 children. Holt Children's Services of Viet Nam, Inter Country Adoption Program Informational Pamphlet.

⁸⁹ *Supra* note 15.

cifically with foreign adoptions would be a progressive step. The typical recognition by states of final foreign adoption decrees is useless to the child not adopted in his native country.⁹⁰ Wisconsin has recently modified its laws to allow for the circumstances of such children.⁹¹

There are provisions which facilitate the process of formalizing the adoption of a foreign-born child in some state statutes.

[T]he court having jurisdiction of adoptions in the country, upon evidence presented by the commissioner of public welfare from information secured at the port of entry, or upon evidence from other reliable sources, may make findings of fact as to the date and place of birth and parentage of such person.⁹²

Where a consent or a surrender is signed in a foreign country, the execution of such consent shall be acknowledged or affirmed in a manner conformable to the law and procedure of such country.⁹³

[I]n the case of any child from outside of the United States, its territories or the commonwealth of Puerto Rico placed for adoption by the welfare commissioner or by any child-placing agency, the petitioner has filed an affidavit that such child has no living parents or that such child is free for adoption and that the rights of all parties in connection with such child have been properly terminated under the laws of the jurisdiction in which the child was domiciled prior to being removed to the state of Connecticut⁹⁴

Such separate provisions allow for foreign legal and cultural differences without disruption of the intended function of local statutes in domestic adoption. With a minimum amount of legislative enactment, the best interests of all children, foreign and United States born, have been protected in states with these statutory provisions.

C. *Judicial Awareness*

Most effective in the final analysis will be a realistic appraisal by the court of all factors, including the legal and cultural circumstances of the Vietnamese or any foreign-born child. The legal documents of the child should be viewed in the context of

⁹⁰ See notes 47 and 49 *supra*.

⁹¹ WIS. STAT. ANN. § 48.97 (1974); Public Act No. 74-164 § 7(d)(1) (1974) Conn. Legis., *repealing* CONN. GEN. STAT. ANN. § 45-44 (1958).

⁹² MINN. STAT. ANN. § 144.176(2) (1970).

⁹³ ILL. REV. STAT. ch. 4, § 9.1-10K (1966).

⁹⁴ Public Act No. 74-164 § 7(d)(1) (1974) Conn. Legis., *repealing* CONN. GEN. STAT. ANN. § 45-44 (1958).

the needs and realities faced by citizens of Viet Nam or another foreign state. Effective safeguards remain for the scrutiny of the court: the licenses and qualifications of the intermediary agencies and institutions concerned, enforcement of thoroughness in adoptive family studies, and state department of welfare approvals of those studies.⁹⁵ One authority has urged that the court seek

[a]ssurance that a thorough investigation of all relevant facts has been made by some competent and reliable person or welfare agency, so that the court can know that the adoption is likely to be successful. That is more important than anyone's domicile, more important than any mechanical or legal connection between any person and any state. Insistence upon connection with a particular state is artificial and irrelevant to the true problem.⁹⁶

CONCLUSION

The legal concept of adoption has evolved from provision for a legal heir to present concern for the best interest of the child.⁹⁷ The unique manner in which foreign adoption, as discussed herein, has developed indicates that the concept of adoption may be evolving further still toward a time when the focal point of the concept will be the right of any child anywhere, regardless of geographical or legal boundaries, to accommodation of national laws and a mutuality of understanding between them which will permit that child to attain "affection, care and protection . . . and a legal relationship that includes the same rights and responsibilities that exist between natural parents and their children."⁹⁸

The development of foreign adoption is unique because the leadership in establishing procedures for meeting the legal requirements of a foreign nation, the United States Immigration and Naturalization Service, and the state, came not from formal adoption agencies but from individual United States citizens.⁹⁹ The courage and resourcefulness of such individuals began the phenomenon now recognized as international or foreign adoption. In order to unite children with families needing and wanting

⁹⁵ 8 U.S.C. § 204.2 (1970).

⁹⁶ LEFLAR, *AMERICAN CONFLICTS LAW* 579 (1959).

⁹⁷ Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922); Huard, *Law of Adoption: Ancient and Modern*, 9 HARV. L. REV. 743 (1956).

⁹⁸ See note 1 *supra* and accompanying text.

⁹⁹ Two pioneers in the field of international adoption are Mr. Harry Holt and Mrs. Wende Grant. See note 88 concerning Mr. Harry Holt. In 1965, Wende Grant, Director of Friends For All Children, and Duane Grant were among the first United States citizens to complete a Vietnamese adoption by proxy.

them, and to responsibly share this expertise, international adoption agencies have been founded.¹⁰⁰

Similar initiative and resourcefulness is required of present adoptive parents who must prepare extensive legal documents and make considerable financial and emotional investment, based only upon the hope that a child may be placed with them. Such determination is not born of objective awareness. Those aware of the truly overwhelming nature of international "red tape" and those aware of the potential legal pitfalls are among the first to become discouraged and withdraw. Therefore these parents and the best interests of their adoptive children are especially needful of a United States legal system as cognizant of their needs as it is of the needs of parties to domestic adoptions.

The current movement toward refinement of adoption procedure is a viable solution to the scarcity of children available for adoption in the United States, and to the desperate needs of children in other parts of the world. It is, however, a phase which will require added perspective on the part of the courts and legislators if our legal system is to protect the rights and meet the needs of this unique and growing segment of the United States citizenry as adequately as it has met other needs and novel circumstances in the past.

Doris M. Besikof

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APPENDIX

CIVIL CODE OF THE REPUBLIC OF VIET-NAM, promulgated by Decree-Law No. 028-TT/LSU dated December 20, 1972. Articles 247-54, 263-64, 274, 276 concerning adoption, child welfare *etc.*

TITLE VII—ADOPTION

CHAPTER I: REQUIREMENTS FOR ADOPTION

Article 247. An adoption should be based on legitimate reasons and be beneficial to the adopted child.

A person may adopt several children, but a child cannot be adopted by several persons, except by two spouses.

Article 248. Only a man or woman over 35 years of age shall be authorized to adopt a child and [he or she] should be 20 years older than the adopted child unless exemption is granted by the Chief of State.

A married man or woman can only adopt a child jointly with the spouse or with the consent of the latter.

Unless exemption is accorded by the Chief of State, both spouses who adopt a child should have been married for at least 10 years and have remained childless, and one of the spouses should fulfill the requirements stipulated in paragraph 1 of this article.

When one of the spouses cannot express his opinion concerning the matter, the other may adopt the child for his own, but should fulfill all other requirements stated above.

Vietnamese citizens may adopt and be adopted by foreigners.

Article 249. If the adopted child is a minor and his own parents are still alive, both parents must consent to the adoption.

If the father or the mother is dead or unable to express an opinion on the matter, the consent of either one of them is sufficient.

If the parents are separated or divorced, the consent of the father or the mother, whichever has custody of the child, is sufficient to the completion of the adoption, but he or she should notify the other spouse. The latter has the right to object to the adoption within a period of 1 month with a notarized act to the spouse who consented and to the person who wants to adopt the child.

Article 250. If both parents of a minor are dead, or if both are unable to express [an opinion] on the matter, the consent shall be given by either the paternal grandfather or paternal grandmother. If they are not available, the consent shall be given by either the maternal grandfather or maternal grandmother.

If no grandparents are alive, the consent shall be given by the family council.

If it is an abandoned child or an illegitimate child who has been recognized but whose parents are dead or unable to express [an opinion] on the matter, the consent shall be given by the court in lieu of the family council.

With regard to children being reared by a benevolent society, such society shall give consent to the adoption.

Article 251. The consent of the child is also necessary if he is 16 years of age.

CHAPTER II: PROCEDURES FOR ADOPTION

Article 252. The adoption of the child is made by a contract of adoption concluded in the presence of: a notary of office of justice of the peace at the place of residence of the adoptive parent or the adopted child, the adoptive parent, the child if 16 years old, and any person whose consent is necessary to the adoption.

If these persons live abroad, they can submit their consent to Vietnamese diplomatic or consular personnel.

Article 253. The contract of adoption shall record the consent of the parents or the grandparents, or the family council, or of the benevolent society, along with the consent of the adopted child if 16 years old.

Article 254. The contract of adoption shall be approved by the court of first instance at the place where the contract was made, upon request of either party concerned.

In the case mentioned in Article 249, paragraph 3, the court will hear the pleading of both parents before having a public hearing for the case. The brief of the case shall be submitted to the public prosecutor. The court shall, in a public hearing, approve or reject the adoption after having considered:

- (1) whether the fulfillment of the legal conditions have been fulfilled;
- (2) whether the motivation for the adoption is legitimate and whether the adoption is beneficial to the child.

CHAPTER III: EFFECTS OF ADOPTION

Article 263. The adoption may be abrogated by order of the court upon request of the adoptive parent or the adopted child, or relatives [of the child] when he is a minor, only for very important reasons.

The court shall decide after hearing the pleading of the public prosecutor.

The declaratory part of the judgment shall be transcribed and recorded in the margin of the birth certificate of the adopted child as stated in Article 256.

The judgment shall also determine the guardianship of the child, if he is a minor.

Article 264. The judgment abrogating the adoption shall terminate all future consequence of the adoption.

TITLE VIII—PATERNAL POWER

Article 274. During marriage, the father shall enjoy the property of the juvenile child until the child is 18 or has become emancipated [from the parental power]. If the father dies, such enjoyment shall be assumed by the mother.

In case the parents are divorced or separated, such enjoyment shall belong to the party the court deems not at fault in the divorce or separation.

Article 276. Property acquired by the child from his own labor or from an inheritance which specifies that the parents shall not take any part therein, shall be separated from that enjoyed by the parents.

Prepared by Phuong Khanh Nguyen, Legal Processing Assistant, Far Eastern Law Division, Law Library, Library of Congress, Aug. 1974.

DECREE LAW No. 027/166 of July 15, 1966, laying down modalities for the operation of charitable institutions in Viet Nam (selected articles therefrom).

CHAPTER I

CHARITABLE INSTITUTIONS DEFINITION AND PROCEDURE FOR SETTING UP

ARTICLE 2. Charitable institutions can operate only after having obtained a license issued by the Minister of Social Affairs, after they have filed a declaration in due form to the Prefecture of Saigon, the Mayor's Office or the Provincial Administrative Headquarters in the provinces depending on the location of the said charitable institution. The procedure for the filing of the said declaration is outlined in the following articles.

ARTICLE 3. Charitable institutions having been set up exactly as per the provisions outlined herein, shall be granted the juridical personality. Charitable institutions having been confirmed as being of public utility shall have in addition the capability to receive donations made by living persons or by persons after their death . . .

ARTICLE 4. In the declaration in respect of the setting up of the charitable institution, the following information shall have to be given:

- Name of the agency
- Its objects and policies
- Office

- Relief capability, and operating facilities of the agency
- Full name, citizenship and address of the Director of the agency.

. . . .
. . . .

ARTICLE 7. Any change in the location of the office, name and By-laws of the agency shall have to be reported to the administrative authorities of the locality eight (8) days prior to carrying out same.

ARTICLE 8. Those having been convicted of a felony or a misdemeanor and who have been sentenced to imprisonment, except sentenced due to inattention or negligence, and not the offense of fleeing after having caused a traffic accident, shall not be qualified for holding the position of Director, training member or supervising member of a charitable institution.

If during their term of duty, any of these staff members fall within the above cases of disqualification, they shall have to resign and the agency shall have to find forthwith a replacement.

. . . .

ARTICLE 10. Whenever a director is replaced, the agency shall have to report the fact to the administrative authorities of the locality. To the report shall be attached the judiciary record of punishments not more than three months old of the replacement.

The Prefect, Mayor or province chief of the locality shall give his comments, and shall convey the said report to the Minister of Social Affairs who will examine it and decide it. In case the Ministry of Social Affairs does not approve it, the agency shall have to propose another replacement.

ARTICLE 11. Any change in the training and supervising staff shall also have to be reported to the administrative authorities of the locality eight days prior to the carrying out of same.

To the said report shall be attached an extract from the judiciary record of punishments not more than three months old of the replacement.

CHAPTER II

CONDITIONS FOR OPERATION

ARTICLE 12. Charitable institutions shall have to comply with laws and regulations on public sanitation.

ARTICLE 13. Whenever it is found that the life or health of the relieved persons is jeopardized due to the narrowness of the installation, or due to the constructions being unfirm, or due to the negligence in the care and feeding of the above persons, or because there is an abuse or rough treatment against them, the director shall have to fix up constructions which have to be rehabilitated or shall have to straighten up the way of operating the agency by taking appropriate action.

In case of emergency, the Prefect, Mayor or Province Chief may order the temporary closing of the agency until the maintenance of the installation is completed, or changes in the training and relief are made.

ARTICLE 14. Each agency shall have to keep a register numbered and initialled by the Prefect, Mayor or Province Chief on the first page and last page thereof. The following information shall have to be given in full:

- a. With respect to orphans of less than 18 years of age: Full name, age, sex, birthplace, parents' name, address (if any), and the ones of persons having entrusted them to the agency.

Besides, as regards unrecognized persons and that the above information cannot be written, the following should be specified: estimated age, sex, special physical features upon their admittance, date and time of admittance, and sent to the agency by which individual or agency.

Three (3) days after having admitted children not having been recognized by anyone, the agency shall have to report to the local administrative authorities for making out their civil status.

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ARTICLE 17. The agency shall be compelled to keep account books, it shall have to record cash receipts and cash disbursements in a clear manner, as well as donated items and sums of money, and how the income and properties donated during the lifetime and after the death of persons are managed and utilized. The agency shall also have to keep adequately all documents for supporting each disbursement having been made as well as all cash receipts referred to in the above paragraph.

ARTICLE 18. If the group or private person who/which is running the agency wants to stop the operations of the said agency on his/its own initiative, he/it shall have to give a prior notice of at least one (1) month to the Prefect, Mayor or Province Chief together with a report on the financial position closed as of the date of stoppage of operation, and an inventory of properties (personal properties and real properties) for enabling the authorities to solve on time various problems on the number of relieved persons, on the finance and properties of the agency, if any.

CHAPTER III

CHECKING AND SANCTIONS

ARTICLE 19. All charitable institutions are placed under the permanent control of a local control committee

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ARTICLE 21. In addition to the penalties provided for criminal offenses, the director and staff of charitable institutions may also receive warnings, or they may be proposed for being replaced, and the charitable institution may be closed temporarily or definitively by a decision of the Minister of Social Affairs based on the report and recommendations of the members of the Control Committee referred to in Articles 19 and 20 hereabove.

ARTICLE 22. Private persons or persons managing an association or convents who/which, on his/their own initiative, give permission to the operation of a charitable institution without a license as referred to in article 2 hereabove, or who/which do not comply with the order closing the agency temporarily or definitively shall be liable to a fine of from VN\$1,000 to VN\$10,000 and to imprisonment ranging from one to 5 days, or to one of these two penalties.

In case of a second offense, the bodily sanction shall have to be enforced, and the amount of the fine shall be doubled.

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ARTICLE 23. Any director or staff of a charitable institution having not been ratified, but who still take part in the operations of the agency in such a capacity shall be liable to a fine ranging from VN\$1,000 to VN\$10,000.

In case of second offense, the penalty shall be doubled and the offender may also be jailed during one day up to 5 days. In addition, the agency may be closed.

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Translated by: Truong Dac Phung, legal translator.

